

**Fair Political Practices Commission**  
**MEMORANDUM**

To: Chairman Johnson and Commissioners Hodson, Huguenin, Leidigh, and Remy

From: John W. Wallace, Assistant General Counsel  
Scott Hallabrin, General Counsel

Subject: Prenotice Discussion of Regulation 18946.6: Reporting and Valuation of Gifts:  
Air Transportation

Date: March 26, 2008

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Proposed Commission Action and Staff Recommendation: Approve publication of notice for adoption of Regulation 18946.6 at the Commission's June 2008 meeting.

Reason for Proposal: The Political Reform Act (the "Act") places certain restrictions on the receipt of gifts by public officials. The Act prohibits candidates and officials from receiving gifts of \$390 or more in a calendar year from any reportable source. A \$10 per month limit applies to gifts made to state officials by lobbyist or lobbying firms. In addition, the Act prohibits a public official from making, participating in making, or using his or her official position to influence a decision involving the donor of a gift valued at \$390 or more in a 12-month period where the decision will have a foreseeable and material financial effect on the donor. (Section 87103.) Finally, gifts are reportable at \$50 on the official's Statement of Economic Interest.

In order to implement these requirements, the Commission has adopted a series of rules concerning valuation of gifts. However, there is no rule specific to the valuation of free air transportation. Currently, the Commission advises consistent with the Commission Opinion *In re Stone* (1977) 3 FPPC Ops. 58. *In re Stone* dealt with gifts to an agency. However, after concluding the air transportation in question did not qualify as a gift to the agency but was actually a gift to the official, the Commission also stated:

"We recognize that in the instant case, it may be difficult to estimate the value of the intangible services received. Accordingly, the filer may utilize the commercial air rate or the charter rate divided by the number of passengers as guideposts in estimating the value of the flight. If the filer believes that this amount standing alone is misleading (since the city reaps part of the benefit), he may attach an explanatory note to his Statement of Economic Interests."

However, the application of the rule in *In re Stone* can result in the disclosure of a value for gifts of air transportation that may have no relationship to the actual cost of the air transportation received. For example, under the current rule an official could take a flight on a luxurious Gulfstream IV and value it on his or her SEI at the least expensive supersaver rate offered for the trip.

Summary of Proposed Actions: Proposed Regulation 18946.6 applies a more reasonable valuation method for free air transportation. Under the regulation, the value of an airplane ticket on a commercial aircraft is the actual cost of the ticket.<sup>1</sup> Thus, an official could only use the supersaver rate for a flight the official took and that actually cost the donor that amount.

However, where the actual cost of the ticket or fare is not ascertainable because the flight is not on a commercial aircraft, the proposed regulation requires the official to determine the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size. The regulation also recognizes benefits shared by numerous California public officials, and even federal officials, if wholly attributed to one recipient, may overvalue the gift received. Thus, the regulation provides that the fair market value may be pro rated among the following:

“[T]he number of the following persons that share the same flight:

“(A) ‘Public officials’ as defined in Government Code Section 82048.

“(B) Members of Congress, and officers and employees of the executive, legislative, or judicial branch of the United States government.”

The proposed pro ration method departs from prior advice in *In re Stone*, which allowed valuation of the flight by dividing the cost among all the passengers. The proposed rule provides a formula similar to one applied to United States Senators by the Standing Rules of the Senate, which requires valuation of the flight by dividing the cost among all the “Members, officers, or employees of Congress” on the flight. Staff prefers the U.S. Senate rule since the *In re Stone* formula is subject to abuse. For example, a corporation could transport a single public official on the corporation’s private charter jet to a conference along with nine lobbyists and other employees of the corporation. Under the old formula, the value of the flight would be 1/10th of the value of the plane. However, a more realistic method in this scenario would be to treat the entire cost of the charter as a gift to the official. Thus, in the case of a trip on a Gulfstream IV, the official would determine the rental rate for a comparable airplane (a Gulfstream IV), and pro rate the value by the number of public officials.

Finally, for benefits received during the flight, such as food, beverages, or entertainment, the regulation reaffirms that the official must report the value of these benefits as separate gifts unless the value of such gifts is already included in the charter cost.

Appendix 1: Proposed Regulation

Appendix 2: *In re Stone* (1977) 3 FPPC Ops. 58.

Appendix 3: Excerpt from the Standing Rules of the Senate (September 14, 2007)

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<sup>1</sup> “Commercial aircraft” is defined as an aircraft operated by a person who offers air transportation to the general public and charges a fare on a per-passenger basis.